

Message Text

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ORIGIN AEC-11

INFO OCT-01 ADP-00 ACDA-19 CIAE-00 INR-10 IO-13 L-03

NSAE-00 NSC-10 RSC-01 SCI-06 SCEM-02 NEA-10 /086 R

66602

DRAFTED BY: USAEC:DIP:DBHOYLE

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USAEC:AGM:JJFLAHERTY

NEA/INS:JHHAWES

USAEC:AFRIEDMAN

NEA:LBLAINGEN

NEA/INS:DWBORN

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P 101620Z AUG 73

FM SECSTATE WASHDC

TO AMEMBASSY NEW DELHI PRIORITY

INFO AMCONSUL BOMBAY PRIORITY

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E.O. 11652: N/A

TAGS: TECH

SUBJECT: INDIA ASKS HELP ON ENRICHED URANIUM PROCUREMENT

REF: NEW DELHI 9023

1. RELEVANT FACTS THIS INDIAN ENRICHED URANIUM PROCUREMENT ARE:

(A) IN/DS/3 PROVIDES (IN ARTICLE II.B.2) THAT AEC WILL NOTIFY THE BUYER FROM TIME TO TIME OF THE ADVANCE NOTICE REQUIREMENT FOR TIMELY FULFILLMENT OF PURCHASE ORDERS. AEC CABLE OF APRIL 6 TO VERMA OF TAPS, WHICH WAS INTENDED TO CONVEY SUCH NOTICE, STATES, "IN THE FUTURE, A MINIMUM OF 120 DAYS ADVANCED NOTICE WILL BE REQUIRED...". TWX AS SENT FROM AEC CLEAR AND UNGARbled. SINCE CABLE WITH OMISSION AS PROVIDED BY INDIANS NOT ONLY FAILS TO MAKE SENSE BUT DOES NOT CONVEY PRINCIPAL INFORMATION WHICH IT OBVIOUSLY WAS INTENDED TO COVER SURPRISED THAT TAPS OFFICIALS DID NOT REQUEST CLARIFICATION. (SUBSEQUENTLY, THE INDIANS HAVE BEEN ADVISED OF A FURTHER UNCLASSIFIED

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INCREASE BY AEC IN THE ADVANCE NOTICE PERIOD TO 180 DAYS.)

(B) VERMA WAS ADVISED BY PINAJIAN ON MAY 5 THAT THE AEC'S ADVANCE NOTICE REQUIREMENTS WERE A MINIMUM OF 90 DAYS, BUT THAT IT WAS ADVISABLE TO GIVE 120 TO 180 DAYS NOTICE. VERMA LETTER OF MAY 25 (RECEIVED BY AEC ON JUNE 4) REQUESTS DELIVERY "FIRST FORTNIGHT OF AUGUST", WHICH DOES NOT PROVIDE FOR EVEN THE AFOREMENTIONED MINIMUM 90-DAY NOTICE. DESPITE FAILURE THIS REQUEST TO MEET ITS NOTICE REQUIREMENT, AEC PROMPTLY CHECKED WITH ENRICHMENT PLANT OPERATOR TO SEE IF EARLIER DELIVERY POSSIBLE AND WAS ADVISED THAT, AS RESULT OPERATIONAL REQUIREMENTS IMPOSED LARGELY BY ENRICHMENT CONTRACTS BETWEEN AEC AND NUMBER OF JAPANESE UTILITIES INVOLVING MAJOR DELIVERIES OF ENRICHED URANIUM, EARLIER DELIVERY WOULD BE DISRUPTIVE TO NORMAL OPERATIONS. NONETHELESS, AEC, THROUGH ITS BOMBAY SCIENTIFIC REPRESENTATIVE, ON JUNE 8 INDICATED IT WAS PREPARED TO CONSIDER DELIVERY WITH LESS THAN REQUIRED NOTICE IF TAPS WOULD PROVIDE INFORMATION SUPPORTING OPERATIONAL NECESSITY FOR EARLIER DELIVERY.

(C) STATEMENT OF OPERATIONAL NEED (BUT WITHOUT SUBSTANTIVE SUPPORTING DATA) NOT RECEIVED BY AEC FROM TAPS UNTIL JULY 16. BY THIS DATE, AEC OPERATING CONTRACTOR ADVISED THAT DELIVERY ENRICHED URANIUM PRIOR TO WEEK AUGUST 19 NOT FEASIBLE. AFTER CHECKING WITH INDIAN EMBASSY AND RECEIVING ITS ASSURANCE THAT OPERATIONAL NEEDS AND NOT ABILITY TO OBTAIN MATERIAL AT LOWER CHARGE TAPS PRINCIPAL MOTIVATION, AEC AGREED USE ITS BEST EFFORTS TO MEET AUGUST 19 DELIVERY DATE.

(D) NOVEMBER 26, 1971 AMENDMENT TO IN/DS/3 PROVIDES THAT CHARGE FOR ENRICHED URANIUM WILL "...BE IN ACCORDANCE WITH THE VALUE OF SUCH MATERIAL AT THE TIME OF DELIVERY THEREOF TO THE PURCHASER." SINCE AEC'S CHARGE FOR ENRICHED URANIUM WILL HAVE INCREASED TO ITS NEW LEVEL PRIOR TO AUGUST 19, THE CONTRACT PROVIDES NO BASIS FOR ADMINISTRATIVE RELIEF FROM THE HIGHER CHARGE.

(E) RESPONSIBILITY FOR PROVISION APPROPRIATE SHIPPING CONTAINERS AND PACKAGING IS THE CONTRACTUAL RESPONSIBILITY OF PURCHASER. APPARENTLY AS RESULT DEFICIENCY ORIGINAL INDIAN PURCHASING ORDER, TAPS NOT ABLE PROVIDE ITS OWN SHIPPING UNCLASSIFIED

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CONTAINERS IN TIME TO MEET AUGUST 19 DELIVERY. HOWEVER, AEC HAS SHIPPING CONTAINERS AVAILABLE AND IS PREPARED TO RENT THEM TO TAPS SO THAT DELIVERY CAN TAKE PLACE THE WEEK OF AUGUST 19.

2. IN LIGHT FOREGOING, BELIEVE THAT FOLLOWING POSITION SHOULD BE TAKEN WITH SANYAL AND OTHER INDIAN OFFICIALS:

(A) AEC REGRETS IF THROUGH FAULTY TRANSMISSION OF ITS APRIL 6

TWX THE 120-DAY ADVANCE NOTICE REQUIREMENT WAS NOT KNOWN TO TAPS PRIOR TO MAY 5; HOWEVER, EVEN ABSENT RECEIPT TWX AS SENT, TAPS FAILED TO PROVIDE THE MINIMUM 90-DAY NOTICE.

(B) IN AGREEING TO DELIVERY OF ENRICHED URANIUM DURING WEEK OF AUGUST 19, AEC HAS, IN FACT, EXERTED ITS BEST EFFORTS TO MEET THE INDIAN NEEDS, GIVEN THE SCHEDULE ON WHICH SUCH NEEDS BECOME FIRMLY KNOWN. EVIDENCE OF AEC'S GOOD FAITH IN THIS REGARD IS SHOWN BY ITS AGREEMENT TO LOAN THE NECESSARY SHIPPING CONTAINERS IN ORDER THAT THE AUGUST 19 SHIPMENT DATE COULD BE MET.

(C) THERE IS NO CONTRACTUAL BASIS ON WHICH THE HIGHER CHARGE FOR ENRICHED URANIUM COULD BE REDUCED OR WAIVED. IN THIS REGARD, THERE HAVE BEEN SEVERAL RECENT CASES IN WHICH OTHER AEC OVERSEAS CUSTOMERS HAVE REQUESTED DELIVERIES OF ENRICHED URANIUM ON SHORTER NOTICE THAN IS NORMALLY REQUIRED BY AEC, THE EFFECT OF WHICH WOULD HAVE BEEN FOR AEC TO HAVE PROVIDED MATERIAL AT THE LOWER, RATHER THAN HIGHER, CHARGE. EVEN THOUGH IN THESE CASES THE AEC HAD SUFFICIENT ADVANCE NOTICE OPERATIONALLY TO MAKE DELIVERY ON THE CUSTOMER'S REQUESTED SCHEDULE, THE AEC AGREED TO DO SO ONLY IN THOSE INSTANCES WHERE ADHERING TO THE NORMAL ADVANCE NOTICE PERIOD WOULD HAVE CAUSED SERIOUS AND WELL DOCUMENTED OPERATIONAL DIFFICULTIES FOR THE CUSTOMER. THUS, EVEN IF THERE WERE A MEANS OF ACCEDING TO THE INDIAN REQUEST IN THIS INSTANCE, AEC WOULD BE GOING BEYOND THE POLICY POSITION WHICH IT HAD ALREADY TAKEN IN SEVERAL SIMILAR SITUATIONS.

3. DEPTOFFS PRESENTED ABOVE POSITION TO INDIAN EMBASSY AUGUST 10, SINCE EMBASSY HAD ALSO RAISED QUESTIONS SANYAL HAD RAISED. ROGERS

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